

2/13/2018

To The Honorable Court,

Good Day Your Honor...

2018 FEB 20 A 10:25

CRIMINAL DEPT.

I am add have been a Model Inmate
for the past 11 years without any infractions. Your Honor,
in true fairness, I have witness 3 inmates from this
Court receive "all" of their credit for time spent in
custody after they filed a Petition exactly like mine.
My transcript clearly shows that October 18th, 2006, was
the day that I was placed in custody and it seems that
"do one" will follow what the written Record has stated.
Mr. Pete Terech address this Court on March 28th, 2008,
and stated that the Court should "Give Credit" for time
spent in custody starting from February 17th, 2007. Your Honor,
why can't the Court give me "all" of my time for pretrial
detention?

I am not asking this Court for anything other than what I have EARNED... As I stated before, I have seen this Court Grant other inmates "credit" without deducting any of them. They kindly gave me a copy of their Petition so I could see if my "Case" may have been different as to why I should not receive "full credit" for all of my time spent in Custody...

Your Honor, this Court Grant one of the inmates his "full" credit after he was Extradited from another STATE... This Case is the same as mine and I feel that something is truly wrong with this picture... Your Honor, if need be, I could send this Court a copy of all three of the inmates Petition that shows that they were treated much different than me. All I want is what's fair Your Honor, that's all...

Thank you for your time, from
Mr. Boissy L. Boissy

BOISEY NEAL
Petitioner,

v.

STATE of MARYLAND
Respondent,

* **IN THE**
*
* **CIRCUIT COURT**
*
* **FOR**
*
* **ANNE ARUNDEL COUNTY**
*
* **CASE NO. K-2007-0013**

MOTION FOR RECONSIDERATION OF
PETITION TO CORRECT ILLEGAL SENTENCE

BOISEY NEAL; *Petitioner proceeding pro-se*, hereby moves this Honorable Court for *Reconsideration* of the **January 12, 2018**, denial of his ***PETITION TO CORRECT ILLEGAL SENTENCE*** which petitioned this court pursuant to **ACM, Criminal Procedure Art. §6-218**, to issue an ORDER, and Amended Commitment Record, correcting the illegal sentence imposed by this Court, to include **527 days** pretrial detention [time served] credit which accrued prior to the sentencing date in this instant criminal action, and in support hereof, affirms under the penalty of perjury the following to be true and correct to the best of his information, knowledge and belief, and states:

PROCEDURAL/FACTUAL HISTORY

1. Petitioner is an inmate confined to the custody of the [DPSCS/DOC] Commissioner of Correction; under the identification numbers **[DOC] #349871/ [SID] #978847**, as a result of the conviction and sentence imposed in the instant criminal action.

CRIMINAL DEPT.
2018 FEB 20 A 10:25

2. On **October 18, 2006**, Petitioner was placed in pretrial detention custody subsequent to arrest, pending the resolution of the instant criminal action.
3. On March 28, 2008, Petitioner was sentenced to 30 years; SAB 15 years, and 5 years probation upon release, with credit for [pretrial detention] time served for **288 days**. To begin on **June 14, 2007**.
4. On **December 28th, 2017**, Petitioner filed his ***PETITION TO CORRECT ILLEGAL SENTENCE*** seeking amendment of the commitment record in this matter to include the entire **527 days** pretrial detention [time served] credit which accrued prior to the sentencing date in this matter.
5. On **January 12, 2018**, the Honorable Judge William Mulford denied said ***PETITION TO CORRECT ILLEGAL SENTENCE*** without a hearing, written memorandum opinion or other rationale.

ARGUMENT

The Maryland Court of Appeals, the Maryland Court of Special Appeals, and the U.S. Court of Appeals for the Fourth Circuit have all interpreted **ACM, Criminal Procedure Art. §6-218**, as a *mandatory*; *not discretionary*, requirement that criminal defendants receive credit towards their sentences for *all* time served in pretrial detention confinement upon conviction and sentence in the underlying criminal action.

In *Maus v. State*, 311 Md. 85, 532 A.2d 1066 (1987). The MD Court of Appeals stated, “*Former Art. 27, 638C(a) (now subsection (b) of this [§6-218] section) demonstrates a legislative policy of fairness and is an effort to avoid inequitable stacking of punishment that could result in actual service of a period of imprisonment longer than the sentence imposed by the trial court.*”

The U.S. Court of Appeals [for the Fourth Circuit] concurred in Chavis v. Smith, 834 F. Supp. 153 (D. Md. 1993), opining that, “*A purpose of the credit statute is the elimination of "dead" time, which is time spent in custody that will not be credited to any valid sentence; by enacting former Art. 27, 638C(a) (now subsection (b) of this [§6-218] section), the General Assembly sought to ensure that a defendant receive as much credit as possible for time spent in custody as is consistent with constitutional and practical considerations.*”

The MD Court of Appeals again articulated their interpretation in Dedo v. State, 343 Md. 2, 680 A.2d 464 (1996), stating, “*The statute has a dual purpose: to preclude a defendant from "banking" time before he or she commits a new offense and to eliminate "dead" time, which is time spent in custody that will not be credited to a future sentence.*” See Also Wilson v. Simms, 157 Md. App. 82, 849 A.2d 88 (2004), cert. denied, 382 Md. 687, 856 A.2d 723 (2004); and Gilmer v. State, 389 Md. 656 (2005).

Additionally, as noted in the original petition the unambiguous language of **ACM, Criminal Procedure Art. §6-218**; which states in pertinent part:

CREDIT AGAINST SENTENCE FOR TIME SPENT IN CUSTODY:

(b) In general.-

*(1) A defendant who is convicted and sentenced **shall** receive credit against and a reduction of the term of a definite or life sentence, or the minimum and maximum terms of an indeterminate sentence, for all time spent in the custody of a correctional facility, hospital, facility for persons with mental disorders, or other unit because of:*

(i) the charge for which the sentence is imposed; or

(ii) the conduct on which the charge is based; ... and

(e) Credit awarded at sentencing.-

(1) The court shall award the credit required by this section at the time of sentencing.

clearly establishes that a criminal defendant **must** receive credit towards his sentence for **all** time served in pretrial detention custody upon conviction and sentence in the underlying criminal action. Moreover, this unambiguous language also reveals a legislative intent which seeks “...to ensure that a defendant receive as much credit as possible for time spent in custody...” See Maus, *supra*.

Maryland Courts have indisputably and consistently held this statute to be mandatory, not discretionary. See Generally Toney v. State, 140 Md. App. 690, 692, 782 A.2d 383 (2001); and Stevenson v. State, 180 Md. App. 440 (2008); and Parker v. State, 193 Md. App. 469, 997 A.2d 912 (2010).

CONCLUSION

Having established the mandatory nature of this statute; i.e. “Trial court must give a defendant credit for a period of pre-trial incarceration on the charge for which defendant was held.” See Stevenson, *supra*, it was error not to credit Petitioner for **all** of the time he served in pretrial detention custody prior to conviction and sentence in the instant criminal matter. Consequently, the denial of Petitioner’s **PETITION TO CORRECT ILLEGAL SENTENCE** was arbitrary, capricious, and unsupported by the facts of this case, as well as the controlling statute and interpretative case law.

WHEREFORE, for the foregoing reasons, Petitioner prays this Court for reconsideration of its denial of Petitioner’s **PETITION TO CORRECT ILLEGAL SENTENCE**, and that the Court take immediate corrective action; to wit, the issuance of an ORDER granting the relief sought; i.e., an **Amended Commitment Record** to include credit

for the *full 527 days* pretrial detention [time served] credit served prior to sentencing in this matter, and for any such other or further relief as this Court deems just equitable and proper.

DATED: FEBRUARY 12, 2018

Respectfully submitted,

Boisey L. Neal
Boisey Neal

BOISEY NEAL ^{DOC} #349871/ ^{SID} #978847
Petitioner Pro Se
MCTC - 18800 ROXBURY ROAD
HAGERSTOWN, MD 21746-1001

CERTIFICATE OF NON- ELECTRONIC FILING

I HEREBY CERTIFY that on this 12th day of February, 2018, the original of the foregoing ***PETITION TO CORRECT ILLEGAL SENTENCE*** was filed; via first class prepaid postage, with the Clerk of the Circuit Court for Anne Arundel County.

Boisey Neal

BOISEY NEAL

Boisey L. Neal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of January, 2018, a true copy of the foregoing ***PETITION TO CORRECT ILLEGAL SENTENCE*** was served; via first class prepaid postage, upon the State's Attorney for Anne Arundel County.

Boisey Neal

BOISEY *Neal*

2018 FEB 20 A 10:26
CRIMINAL DEPT.